

GAHC010107042021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH) Case

No. : Bail Appln./1631/2021

SUBHASH KUMAR SINGH
S/O LATE KAPIL DEO SINGH
R/O 101, ASTHA PRESTIGE, FATASIL
AMBARI, P.S. FATASIL AMBARI, GUWAHATI, KAMRUP (METRO),
ASSAM PIN-781009

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY LD. PUBLIC PROSECUTOR, ASSAM

2:THE SUPERINTENDENT OF STATE TAX
ASSAM
BIEO
ASSAM
SRIMANTAPUR
GUWAHATI-32

Advocate for the Petitioner : DR. A SARAF

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE HITESH KUMAR SARMA

ORDER (CAV)

Date : 06-08-2021

The Court proceedings have been conducted through Video-

Conference due to COVID-19 pandemic.

2. This is an application, filed under Section 439 of the Cr.PC. seeking bail of the accused-petitioner, namely, ***Sri Subhash Kumar Singh***, in connection with ***BI(E.O.) Assam Tax P.E. No. 03(03)/2021***, registered under Section 132(1) (i) of Assam GST Act, 2017.

3. Heard learned senior counsel, Dr A.K. Saraf for the Petitioner, assisted by learned Advocate Amit Goyal. Also heard Mr. M. Phukan, the learned Public Prosecutor, Assam for Respondents 1 and 2.

4. I have also perused the investigation report and the record of the case, as produced.

5. Having filed the instant petition under Section 439 of the CrPC, the Petitioner, namely, Subhash Kumar Singh has prayed for enlarging him on bail in connection with the BI (E.O) Assam Tax P.E. No. 03(03)/2021 registered under Section 132(1) (i) of Assam GST Act, 2017. The Petitioner was arrested on 12-07-2021 in connection with the aforesaid case and has been in detention since then.

6. The genesis of the abovementioned criminal prosecution may be traced to when the Petitioner was served with a notice U/s 50 of Cr.P.C. by the Superintendent of State Tax Assam, BIEO, Assam, Srimantapur, Guwahati-32 (hereinafter referred to as the Respondent No. 2), in reference to B.I. (E.O.) Assam Tax P.E. No. 03(03)/2021 under the provision of Section 132(1) (i) of the Assam GST Act, 2017 (in short "the AGST Act") alleging that sufficient materials have been found against the Petitioner regarding his involvement in evasion of taxes and Cess, amounting to more than Rs. 5, 00, 00,000/- (Five Crores) which is a cognizable offence U/S 132(1) (i) AGST Act. It was further alleged that the Petitioner is found to have deliberately supplied goods without issuing invoices

in violation of the provisions of AGST Act with intention to evade Tax during the period of 2019 to 2021. Pursuant to issue of the said notice U/s 50 Cr.P.C. the Petitioner was arrested on 12.07.2021 and was forwarded to the learned Chief Judicial Magistrate, Kamrup Metro, Assam vide the Forwarding Report, dated 12.07.2021, citing reasons therein, *inter alia* that, that the Respondent No. 2 has ascertained that the Petitioner has deliberately supplied goods without issue of invoices in violation of the provisions of the AGST Act with the intention to evade Tax and Cess.

7. It is imperative to note that, from the scrutiny and examination of documents, the authorities found that the total evasion detected inclusive of applicable Tax, Cess, Penalty and Interest is Rs. 22,77,13,211.04/- (Twenty two crores seventy seven lakhs thirteen thousand two hundred eleven rupees and four paisa only) which includes the evaded Tax and Cess amounting to Rs. 10,22,31,514.18/- (Ten crores twenty lakhs thirty one thousand five hundred fourteen and eighteen paisa only) and accordingly the Petitioner is found to have committed an offence punishable under Section 132(1) (i) of the AGST Act.

8. During the course of hearing, Dr. Saraf, the learned Senior Counsel appearing for the Petitioner, would submit that the Petitioner on the day of his production on 12.07.2021 had moved a bail petition before the Ld. Chief Judicial Magistrate, Kamrup Metro, Guwahati and the same was withdrawn on 16.07.2021. He also contended that the law laid down by the Hon'ble Apex Court in the matter of ***Arnesh Kumar v. State of Bihar (2014) 8 SCC 273*** which is directed to be strictly followed during the current pandemic situation as per the direction of the Hon'ble Apex Court in ***In Re: Contagion of Covid 19 virus In Prisons reported in 2021 SCC Online SC 376*** has not been

followed by the Arresting Authorities as well as by the learned court below while remanding the Petitioner to judicial custody. Dr. Saraf, would further contend that the accused should be released on bail in view of the ongoing Covid-19 pandemic.

9. Whereas, Mr. Phukan, learned Public Prosecutor, Assam, in order to buttress the arguments advanced by the learned counsel for the Petitioner, invited the attention of the Court to the order dated 07-05-2021 passed by the Hon'ble Supreme Court in ***SuoMotu Writ Petition (C) No.1/2020 (In re: Contagion of Covid-19 virus in prisons)***. In the said order, the Hon'ble Court, *inter alia*, emphasized the need to strictly control and limit the authorities from arresting accused in contravention of the guidelines laid down in **Arnesh Kumar v. State of Bihar (2014) 8 SCC 273** during the pandemic so that the prisons can be decongested. The Hon'ble Apex Court in Arnesh Kumar (supra) *inter alia* embargoed the police officers from arresting an accused unnecessarily without complying with the provisions embodied in Section 41 and Section 41(A) of the Cr.P.C. in cases where the offence is punishable with imprisonment for a term which may be less than 7 years or which may extend up to 7 years. The Hon'ble Apex Court also directed the learned Magistrates not to authorize detention casually and mechanically without recording his satisfaction on the forwarding report furnished by the police officer. In the order dated 07-05-2021, the Hon'ble Apex Court further directed the High Powered Committees constituted by the State Governments/Union Territories to consider releasing prisoners by adopting the guidelines followed by them last year, at the earliest.

10. Dr. Saraf, the learned counsel for the Petitioner, has also submitted that the Petitioner is running his business from his permanent place of business situated at Ram Bhawan, Room No. 311, 3rd Floor, T.R. Phookan Road, Fancy

Bazar, Guwahati-781001. He also has submitted that the Petitioner is a registered dealer under VAT, CST and GST that the Petitioner appeared before the authorities whenever he was directed to appear, that the Petitioner is a reputed businessman and has not been convicted in any case. Dr. Saraf has tried to persuade this Court that there is no chance of flight risk and that the petitioner did not manufacture any false invoices. The learned senior counsel has further submitted that the Petitioner participated and co-operated in the enquiry conducted by the Respondent No. 2.

11. The learned senior counsel for the Petitioner, while advancing his arguments, has submitted that the Hon'ble Punjab and Haryana High Court while dealing with the provisions of sections 69 and 132 of Central Goods and Services Act, 2017 which are *para-materia* to sections 69 and 132 of the AGST Act has taken into consideration a number of decisions of the Hon'ble Apex Court and different High Courts which held that power of arrest should not be exercised at the whims and caprices of any officer or for the sake of recovery or terrorizing any businessman or create an atmosphere of fear. In support of his arguments, the learned Senior Counsel has placed reliance on the case of ***Akhil Krishna Maggu & Anr. –Vs- DDDG of GST Intelligence and others*** reported in **(2019) SCC Online P & H 5416**. The relevant observations of the Hon'ble Punjab and Haryana High Court made in the said case and emphasized by the learned senior counsel for the Petitioner are reproduced herein below:

“21. Taking cue from judgment of Delhi High Court in the case of Make My Trip (Supra) followed by Madras High Court in the case of Jayachandran Alloys (P) Ltd. (Supra), law laid down by Hon'ble Supreme Court in the case of Siddharam Satlingappa Mehtre (supra) as well keeping in mind Section 69 and 132 of CGST Act

which empower Proper Officer to arrest a person who has committed any offence involving evasion of tax more than 5 years which falls within purview of Section 41A of Cr.P.C. we are of the opinion that the power of arrest should not be exercised at the whims and caprices of any officer or for the sake of recovery or terrorizing any businessman or create an atmosphere of fear, whereas it should be exercised in exceptional circumstances during investigation, which illustratively may be:

- i. a person is involved in evasion of huge amount of tax and is having no permanent place of business,*
- ii. a person is not appearing in spite of repeated summons and is involved in huge amount of evasion of tax,*
- ii. a person is a habitual offender and he has been prosecuted or convicted on earlier occasion,*
- iv. a person is likely to flee from country,*
- v. a person is originator of fake invoices i.e., invoices without payment of tax,*
- vi. when direct documentary or otherwise concrete evidence is available on file/record of active involvement of a person in tax evasion.*

12. The learned senior counsel for the Petitioner has also submitted that the allegations as leveled against the Petitioner are absolutely vicious and his arrest by the Respondent No. 2 is totally unlawful for which the petitioner be enlarged

on bail. The Petitioner has been arrested under Section 69 of the 'AGST Act' for the offence punishable under Section 132(1) (a) of the said Act.

13. The learned senior counsel for the Petitioner further submitted that on a perusal of sections 69 and 132 of the AGST Act it transpires that the Commissioner of State Tax to arrest such person must have reason to believe that the person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of Section 132 of the AGST Act. The learned senior counsel for the Petitioner contends that in the present case, no assessment was undertaken by the Assessing Officer and that the Respondent No. 2 acted without authority of law and in arresting the Petitioner without determination of tax, cess, penalty and interest by the Assessing Officer. He has further submitted that the Respondent No. 2 is not an assessing authority for determination of Tax, Cess, Penalty & Interest by undertaking assessment proceedings. He has also contended that the Respondent No. 2 acted illegally in imposing an imaginary figure of Rs. 22, 77, 13, 211.04/- as Tax, Cess, Penalty, and interest upon the Petitioner.

14. The learned senior counsel for the Petitioner has also argued that out of Rs. 22,77,13,211.04/-, the Respondent No. 2 has shown Rs. 10,22,31,514.18/- as Tax, and Cess evaded. He has submitted that it is a settled law that liability of payment of tax, cess, penalty and interest can only be determined after undertaking assessment proceedings in accordance with law. It is further submitted that in the present case, no assessment whatsoever has been undertaken as regard to determination of tax, cess, penalty and interest by the Assessing Authority.

15. Dr. Saraf, the learned senior counsel for the Petitioner, in support of his arguments, has also placed reliance and invited the attention of this Court to the case of ***Make My Trip (India) Pvt. Ltd. -Vs- Union of India &Ors. (2016) SCC Online Delhi 4951.*** In the said case, while examining the powers of Directorate General of Central Excise Intelligence of arrest, investigation and assessment of service tax under the provisions of the Finance Act, 1994 which is *pari materia* with the provisions of 'AGST Act' held that without determination of service tax and penalty by following due process of law, arrest should not be made. The decision of the Hon'ble Delhi High Court was later affirmed by the Hon'ble Apex Court in ***Union of India &Ors. -Vs-Make My Trip (India) Pvt. Ltd. (2019) 11 SCC 765.***

16. In pursuance of the aforesaid, the learned senior counsel for the Petitioner would also contend that, in the present case, the Principal Commissioner has not applied his mind in correct perspective before authorizing the Respondent No. 2 to arrest the Petitioner and simply recorded that he has reason to believe that the Petitioner has committed an offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of Section 132 of the said Act. The learned Senior Counsel further submitted and placed reliance on the case of ***JotiPrashad v. State of Haryana 1993 Supp (2) SCC 497*** that while interpreting penal law, protection of liberty has to be accepted as the provision of the statute provided that the authority must have reasonable belief and the expression "reason to believe" has to be accepted jurisprudentially. The relevant observation of the Hon'ble Apex Court made in the said case and emphasized by the learned senior counsel of the Petitioner are reproduced herein below:

“4. Under the Indian Penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge", and 'reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 I.P.C explains the meaning of the words "reason to believe" thus:

26. "Reason to believe" - *A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.*

In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements

i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case....."

17. On the basis of the observation, the learned senior counsel for Petitioner has submitted that the Commissioner has to record "reason to believe" after the records of such inspection and search are communicated to him under sub-section 10 of section 67 of the Act or in any other manner the materials are placed before him for the formation of his "reason to believe". He has further submitted that when the Commissioner or the delegate has reason to believe that the person concerned has committed an offence which necessitates arrest, an order has to be passed and such order logically, reasonably and prudentially must be informed by reasons or must contain the reasons which have emanated from "reasons to believe" entertained by the authority concerned. And as such, the authorization of arrest given to the Respondent No. 2 by the Principal Commissioner is not valid in the eye of law and thereby the Petitioner is liable to be released on bail. He urged that if the Petitioner is not granted bail, serious prejudice will be caused to him.

18. The learned Senior Counsel for the Petitioner further omnipotently denies the allegation as leveled against the Petitioner by the Respondent Authorities pertaining to the evasion of Tax, Cess, Penalty and Interest and in furtherance of such denial, he has argued that the Respondent No. 2, only to make the offence non-bailable, arbitrarily and without following the due process of law, has shown Rs. 10, 22, 31, 514.18/- i.e. above 5 Crores as tax and cess evaded. Unless and until, the liability to pay tax, cess, penalty and interest has been determined by undertaking assessment proceeding by the Assessing authority, question of arrest does not arise. In the present case, the Respondent No. 2 who is not an assessing authority to assess the liability of tax, cess, penalty and

interest acted without authority of law and without jurisdiction in showing imaginary figure of tax, cess, penalty and interest evaded more than 5 Crores and arresting the Petitioner and as such the Petitioner is liable to be released on bail.

19. The learned senior counsel for the Petitioner has drawn immediate attention of this Court that from a conjoint reading of section 132 (1) (i) and section 132 (5) of the AGST Act, it appears that the ingredients of section 132 (1) (i) are not at all attracted in as much as no assessment proceeding was conducted by the Assessing Authority for the determination of tax, cess, penalty and interest. It is further submitted that it is relevant to mention herein that it is a settled law that liability of payment of tax, cess, penalty and interest can only be determined by undertaking assessment proceeding by the Assessing Authority. In the present case, the Petitioner was arrested by the Respondent No. 2 without determination of tax, cess, penalty and interest in assessment proceedings by the Assessing Officer and therefore, the Petitioner is liable to be released on bail.

20. The learned senior counsel for the Petitioner has further submitted that the Petitioner has not committed any offence(s) as alleged against him in the instant case and even assuming that there is any evasion of Tax, the instant case falls under the purview of Non-Cognizable and Bailable offence. It has further been that a considerable amount of time has elapsed since the arrest (on 12.07.2021) of the Petitioner and the matter has already been investigated. Therefore, there is no requirement of keeping the Petitioner detained in custody any further.

21. Mr. M Phukan, the learned Public Prosecutor, Assam representing both the

respondents, has submitted that based on intelligence and data available from GSTN BO Portal 360 degree profile a team of BIEO Tax Cell headed by the Asstt. Commissioner of State Tax, BIEO (Bureau of Investigation (Economic Offences), Assam, inspected /searched the business premises of M/s Subhash Kumar Singh on 08.04.2021 under section 67 clause (1) of the AGST Act, 2017.“

22. The learned Public Prosecutor has further submitted that in accordance with the said provisions, search was conducted and seizure was made observing necessary legal formalities. In the process many sales related incriminating papers such as loose slips, khata, mobile phone and a laptop were seized under section 67 clause (2) of the AGST Act, 2017.

23. It is submitted by the learned Public Prosecutor that on scrutiny and examination of all seized documents, in presence of the tax payer and proprietor and /or his authorized representative, huge amount of tax evasion by the firm could be detected. Besides, during the course of enquiry all the seizures have been signed by the accused i.e., the Petitioner and his representative(s) respectively. It is further stated that it could be ascertained that the tax payer deliberately supplied goods without issuance of invoices in violation of the provisions of Assam GST Act, 2017 with the intention to evade tax. From the verification and examination of the documents it transpires that the total evasion detected inclusive of applicable tax, cess, penalty and interest is Rs. 22, 767, 13, 211.04/- and this includes the tax and cess evaded which comes to Rs. 10, 22, 31, 518.18/-. The learned Public Prosecutor, Mr. Phukan has also submitted that the taxpayer/accused Subhash Kumar Singh is liable under Section 132(1) (i) of the Assam GST Act, 2017.

24. The learned Public Prosecutor has further submitted that during the course

of enquiry, the tax payer was issued with a notice on 9th April 2021 for production of books of account/records in connection with the seized documents under Section 35 (1) of Assam GST Act, 2017.

25. Mr. Phukan, has further submitted that the accused, during the course of enquiry, was examined several times and he presented himself before the enquiry, officer for verification of seized documents and articles which continued till 01.07.2021. He has further submitted that the entire assessment pertaining to the aforesaid evasion of tax was done in the presence of the accused and his authorized representative who did put their respective signatures thereby acknowledging the seizures. The learned Public Prosecutor would contend that that on verification of seized documents, the accused was found to have deliberately supplied good without issuing of invoice. On being interrogated, the accused was not able to substantiate and produce the supporting documents such as invoice, vouchers, sale register, stock register, etc. It is further submitted by the learned Public prosecutor that during the course of verification/ investigation, *prima facie* incriminating materials were found against the Petitioner leading to violation of the provisions of Assam GST Act. 2017 with the intention to evade tax during the period of 2019-21 as follows:

“i. That the taxpayer had paid only a meager amount of (Rs. 15, 261/- Rs. Fifteen Thousand Two Hundred Sixty Two Hundred Sixty Two only) in cash under the Cess Head in returns tiled during the financial year 2017-2018 where his turnover was approx. Rs. 2, 28, 52, 237/-.

ii. That the taxpayer utilized 100 percent of Input Tax Credit (ITC) in the year 2018-19 and 2019-20 where turnover

is Rs. 3, 36, 35, 002/- and Rs. 8, 71, 23, 015/- respectively. In other words the accused taxpayer failed to pay any GST in cash despite such a high turnover (Value of goods supplied or sold approx.) of 12 crore during its period. Under Rule 86 B of the CGST Rules as per Notification No.94/2020 –Central Tax dated 22nd December, 2020, the applicable registered persons cannot use ITC in excess of 99% of Output Tax Liability. In other words more than 99% of the output tax liability cannot be discharged by using input tax credit. Whereas, the taxpayer utilised 100 percent of Input Tax Credit in the year 2018-19 and 2019-20 where turnover is Rs. 3,36, 35002/- and Rs. 8,71, 23,015 respectively.

iii. Though the accused taxpayer had a turnover of more than 8 crore (as per GSTN BO portal 360 profile) in the Financial Year 2020-21, he failed to declare any warehouse or godown from where he does his business. It is highly unlikely to conduct business with such high turnover without any godown. Moreover, evidence has been collected from records in sized exhibits that conducted business from some godown in Lakhra, Guwahati.

iv. That the accused taxpayer deliberately and intentionally concealed his actual turnover and liability to pay consequent GST is evident from examination of the seized documents which clearly establishes his concealed business activities/supplies. The details of such concealed/secreted

business transactions were accepted by the accused taxpayer during examination and he has put his signature as a token of that acceptance.

v. The accused taxpayer did not create any e-way bill to escape his liability.

vi. That that taxpayer did not display his GSTIN at his declared principal place of business.”

26. Countering the submission of the learned senior counsel for the Petitioner, the learned Public Prosecutor, with regard to the judgment of the Hon'ble Apex Court *in Re: Contagion of Covid 19 Virus reported in 2021 SCC Online 376*, has submitted that the aforesaid judgment pertaining to the release of a person on parole and the direction given to a police officer not to arrest a person in contravention of the guidelines laid down by the Hon'ble Apex Court in *Arnesh Kumar vs. The State of Bihar* was passed during the Covid 19 pandemic when the situation for the same in the entire country was very alarming and the positivity of cases and the fatality rate were very high during the 1st wave of Covid 19 pandemic. But, the situation now has vastly improved and the positivity rate of cases and fatality rates respectively has significantly decreased throughout India and in Assam the positivity rate is presently below 1% and the recovery rate is accordingly in the higher side. As such, the situation which necessitated the passing of the said order by the Hon'ble Court would not be applicable in the instant case taking into account the prevailing situation and the arresting authority has rightly arrested the accused person on 12.07.2021.

27. Mr. Phukan, the learned Public Prosecutor, Assam has also contended that the averments made by the learned Senior counsel for the Petitioner that the accused is innocent and a reputed businessman are unsustainable and devoid of any merit. He further states that it is evident from the month wise statement of imposable taxes and penalties calculated that he is used to evading taxes month after month during the whole period of examination i.e. 2019-2021. The taxpayer's *malafide* intention is also clear from the fact that he has not been keeping records of all his transactions in his regular book of accounts. The learned Public Prosecutor has further submitted that during the course of enquiry it transpires that the taxpayer has been supplying goods without issuing invoices in violation of the provisions of Section 31 of Assam GST Act, 2017.

28. The learned Public Prosecutor has also vehemently argued that since the tax evaded by the accused is more than 5 crores, he was arrested and forwarded to judicial custody, the offence being cognizable and non-bailable as per Section 132 (5) of the Assam GST Act, 2017, there is no illegality in his arrest and detention.

He has further submitted that it is evident from Section 132 (1) (i) of the Assam GST Act, 2017 that in the event tax evasion exceeding Rs. 5 crore , the investigating agency would be mandatorily require to arrest the person as the aforesaid Section is non-bailable. Learned Public Prosecutor, countering the submissions of the learned senior counsel for the Petitioner, contended that as far as the judgment of the Hon'ble High Court Punjab & Haryana is concerned, has submitted that the facts of this case are not same with the facts of the aforesaid decision, and accordingly, the same does not appear to be applicable in the given facts of this case.

29. Mr. Phukan, learned Public Prosecutor, Assam, further urged that before the arrest of the accused petitioner, the Superintendent of State Tax, BIEO wrote to the Principal Commissioner of State Tax for issuing warrant of arrest against the accused petitioner under Section 69 of the Assam GST Act, 2017, which was accordingly issued.

30. Mr. Phukan, learned Public Prosecutor, has lastly submitted that the entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. Mr. Phukan has further submitted that a murder may be committed in the heat of the moment upon passions being aroused, whereas, an economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest. There should not be any undue anxiety to only protect the interest of the accused. Public interest should get precedence over private interest, it is submitted.

31. In view of the submission of the respective learned counsel for both the parties, as exhaustively indicated above, this Court is of the view that Section 132 in the section 69 of the AGST Act providing the power to arrest is only with regard to the nature of the offences specified in the clauses (a), (b), (c) and (d) of the sub-section (1) of the section 132 for which the punishment is provided in the clauses (i) and clause (ii) of the sub-section(1) and the sub-section (2) of section 132 of the CGST Act. Therefore, when a Commissioner forms an opinion and has reason to believe that a person has committed any offence as specified

in the clauses (a), (b), (c) and (d) of the sub-section (1) aforesaid, which is punishable under the clauses(i) and (ii) of the sub section(1) and the sub-section (2) of section 132 of the AGST Act, he may by order authorize any officer of the central tax to arrest such person and accordingly, on authorization to arrest the accused person and on the strength of the said warrant the accused was arrested on 12.07.2021. This Court is of the view that the arresting authority falls under the term "proper officer". This Court is of the further view, in disagreement with the submission of the learned senior counsel for the Petitioner, that the Respondent authorities cannot invoke the power to arrest under section 69 read with section 132 of the AGST Act, 2017 prior to the completion of adjudication/assessment is bereft of reasonable and valid logic. Section 69 is independent of the section 132 of the AGST Act which falls under Chapter XIX and which prescribes the offences and the penalties. The plain perusal of section 132 of the Act indicates that it only provides punishment for certain offences. In this context the sub-section(2) of section 69 of the AGST Act is also relevant as it provides that where a person is arrested under the sub-section (1) of section 69, for an offence specified under the sub-section(5) of the section 132 of the AGST Act which provides that the offences specified in the clauses (a), (b), (c) and (d) of the sub-section(1)of the section 132 and punishable under the clause (i) of the sub-section(1)of the section 132, shall be cognizable and non-bailable, then the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours. In other words, when a person is arrested pursuant to the order passed by the Commissioner who has reason to believe that such person has committed any offence specified in the clauses (a), (b), (c) or (d) of sub-section(1) of section 132 of the AGST Act which is punishable

under the clause(i) of that sub-section, then such offence being cognizable and non bailable as per sub-section (5) of Section 132 of the AGST Act, the officer authorized to arrest such person is duty bound to inform such person about the grounds of arrest and produce him before the Magistrate within twenty-four hours. Therefore, the reference to section 132(5) in subsection(2) of section 69 of the ACGST Act is made so as to differentiate between the person for whom the Commissioner has reason to believe that such person has committed cognizable and non bailable offences or non-cognizable and bailable offences as provided in section 132 of the AGST Act.

32. It is relevant here to refer to sub-section(3) of section 69 of the AGST Act which refers to the Code of Criminal Procedure, 1973 and provides that subject to the provisions of the Code where a person is arrested under subsection(1) of the section 69 of the AGST Act for any offence specified under the sub-section(4) of the section 132 which provides that notwithstanding anything contained in the Code, all the offences under the AGST Act, except the offences referred to in the sub-section (5) shall be non-cognizable and bailable, then such person shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate. In other words, the sub-section(3)(a) of section 69 of the AGST Act provides that when the Commissioner has reason to believe that a person has committed offence under the clauses(a),(b),(c) and (d) of the sub-section(1) of the section 132 of the AGST Act which is punishable under the clause (ii) of the sub-section(1) and the Sub-section(2) of the Section 132 then such person is covered by the sub-section(4) of section 132 of the AGST Act and as such offence would be non-cognizable and bailable and in such circumstances, the officer who is authorized to arrest shall grant bail or in default of bail, forward such person to the custody of the Magistrate. It appears

that with a view to give effect to the power to grant bail by the authorized officer under the clause (a) of the sub-section (3) of the section 69, sub-clause(b) of sub-section(3)of the section 69 of the AGST Act provides for method, of course, subject to the provisions of the Code of Criminal Procedure, that in case of a non-cognizable and bailable offence, Deputy Commissioner or the Assistant Commissioner shall for the purpose of releasing an arrested person on bail or otherwise, has the same powers and be subjected to the same provisions as an officer-in-charge of a police station.

33. Therefore, the provisions of section 69 of the AGST Act are absolutely clear and unambiguous which provides that during the course of inspection, search and seizure when the Commissioner has reason to believe that the person has committed any offence as per the clauses (a), (b), (c) or (d) of the sub-section(1) of section 132 of the AGST Act, which is punishable under the clause(i) or clause (ii) of the sub-section (1) or the sub-section (2) of the section 132 of the AGST Act, then he may pass an order authorizing an officer of the department to arrest such person. Thereafter, if the offence falls under the category of cognizable and non bailable offence as per the sub-section (5) of the section 132, then sub-section (2) of section 69 casts duty upon the officer authorized to arrest such person and to inform such person of the grounds of arrest and produce him before the Magistrate within twenty-four hours; whereas if the offence is non-cognizable and bailable as per the sub-section(4) of the section 132 then subject to the relevant provisions of the Code, the clauses (a) and (b) of the subsection (3) of section 69 provides for enlarging such person on bail by the concerned officer i.e. Deputy Commissioner or Assistant Commissioner exercising the same powers and be subjected to the same provisions as an officer-in-charge of a police station as held in *Vimal*

Yashwantgiri Goswami Vs. State of Gujarat (In R/Special civil Application No. 13679 of 2019 with 3209/2020, 4468/2020, 4456/2020, 13893/2019 and 14141/2019) by the Hon'ble High Court of Gujarat.

34. It is necessary to keep in mind that section 69 of the AGST Act falls under the Chapter XII which provides for inspection, search, seizure and arrest which are in nature of measures prescribed under the provisions of the AGST Act to find out the evasion of tax, if any, by any person. On the other hand, section 132 of the AGST Act prescribes punishment for certain offences falling under Chapter XIX which provides for the offences and penalties. Thus, Section 132 of the AGST Act is enacted by the legislature prescribing punishment for the offences committed by an assessee either upon adjudication and assessment proceedings having been completed or otherwise as per the clauses (a) to (l) of the sub-section (1) of the section 132 of the ACGST Act. Therefore, section 69 and section 132 of the AGST Act operate in totally different fields and the attempt on the part of the petitioners to canvass that unless and until adjudication proceedings of the assessment determining the tax and penalty liability is completed by the department as provided under Chapter VIII of the AGST Act, the Commissioner cannot form any opinion to "reason to believe" that the assessee has committed any offence, is contrary to the entire scheme of the AGST Act. The Principal Commissioner of State Tax, Assam by applying his mind rightfully issued the warrant, upon examination of all materials and incriminating documents, against the accused person and it would be wholly improbable to suggest that the Principal Commissioner of State Tax, Assam did not apply his mind in correct perspective while exercising his jurisdiction under Section 69 of the Assam GST Act, 2017. It is pertinent to mention that vide Notification Order

no. 01/2021 dated 02.01.2021 issued by the Principal Commissioner of State Tax, Assam, vide no. CT/GST-12/2017/110 in pursuant to Government Notification No. FTX.79/2017/74 dated 18th December, 2020 the Special Commissioner of State tax, Additional Commissioner of State tax, Joint Commissioner of State tax, Deputy Commissioner of State tax Assistant Commissioner of State Tax and Superintendent of State tax, are designated the "proper officer", as per Section 35 (6) of the Assam GST Act, 2017.

35. It has been, *prima facie*, found that the evasion of tax was more than Rs. 5 crores which necessitated the arrest of the Petitioner in compliance of the provision of Section 132 (1) (i) of the Assam GST Act, 2017. Hence, the argument put forth by the learned counsel for the Petitioner that the arrest of the Petitioner is illegal and arbitrary is devoid of any merit. This Court has also taken note of the fact, as appears from the materials in the case record, that the Petitioner evaded tax worth more than Rs. 5 crores and the investigating agency has collected materials to show that the Petitioner is the originator of the fake invoices, etc and direct documentary evidence is there in the record about the active involvement of the Petitioner in tax evasion. The investigation of the case is still continuing in order to ascertain the location of the godown and to examine other related witnesses and also for calculation of interest in view of the revised notification (the notification is specifically referred to in para 34) regarding rate of interest which keeps varying from time to time. Moreover, if the Petitioner is enlarged on bail at this stage, he is more than likely to hamper the investigation and/or tamper evidence which may likely to compromise with the entire investigation.

36. Before parting with the record, I wish to make it clear that any

observations/views/opinion expressed in this order are only for the limited purpose of deciding this bail application and shall not impact the case in the trial or in any other proceeding arising out of this case.

37. In view of the discussions above, and taking into account, the fact that to carry out further investigation as per the observations made by this Court in the later part of Para 35 as regards requirement of further investigation, this Court is not inclined to grant bail to the Petitioner, at this stage.

38. Therefore, the prayer for bail of the Petitioner stands ***rejected***.

39. Return the case investigation report and the record of the case.

40. The petition stands disposed of accordingly.

JUDGE

Comparing Assistant